

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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File No. 27-CV-23-9758

City of Long Lake,

CASE TYPE:

Plaintiff,

v.

**MEMORANDUM OF LAW IN  
SUPPORT OF THE CITY OF LONG  
LAKE'S MOTION FOR ORDER TO  
SHOW CAUSE**

City of Orono,

Defendant.

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**INTRODUCTION**

On July 14, 2023, the Court granted The City of Long Lake's ("Long Lake") motion for temporary injunctive relief. Approximately two months later, the Defendant City of Orono ("Orono") has blatantly violated and disregarded the Court's Order with a well-publicized plan to recruit and hire Long Lake firefighters and commence unauthorized construction on or near Fire Station 2.

Under the terms of this Court's preliminary injunction order (the "Order"), Orono is enjoined from: (1) directly or indirectly committing any violation of the Contract for Fire Protection and the Contract for Joint Ownership to which the City of Long Lake and the City of Orono are parties, and from interfering with the Fire Service Contract to which the City of Long Lake and the Village of Minnetonka Beach are parties; (2) recruiting Long Lake firefighters to begin working for the Orono Fire Department, seeking a transfer of Long Lake firefighters' pension funds, or otherwise interfering with the work of the Long Lake firefighters before the end of this litigation; and (3) using or hindering the City of Long Lake's use of, Fire Station 1 and Fire

Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use.

Following the issuance of the Order, Orono's counsel, Mr. Reuvers, sent a legal memorandum to the Orono Mayor and City Council, which Mayor Walsh published on social media,<sup>1</sup> providing an "update [] on the status of this litigation and [] our preliminary analysis of the legal issues and recommendations moving forward." Declaration of Sarah D. Greening ("Greening Decl.") ¶ 2, Ex. A. In pertinent part, the memorandum states, "the City may choose to hire any LLFD firefighter who applies for a position, but pursuant to the order may not proactively solicit their employment." *Id.* at 2. Not only does this misconstrue the Court's Order, but Orono and its representatives including Mayor Walsh and Orono Fire Chief Van Eyll unapologetically continue to recruit Long Lake firefighters as well as actively plan to interfere with Long Lake's use of Fire Station 2 by constructing an unauthorized expansion, without the consent of Long Lake.

Orono brazenly continues its pattern of ignoring explicit provisions in the Contract for Fire Protection, and now the Court's Order, by offering an unconvincing interpretation of their obligations that allows them to continue the exact same conduct giving rise to this lawsuit. Orono's interpretation of the Order is disingenuous and its actions are defiant. Long Lake requests the Court issue an order to show cause as to why Orono should not be held in contempt and requests

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<sup>1</sup> The memorandum contained legal advice and analysis directly of Orono's counsel, Paul Reuvers, to his client the Orono City Council. Mayor Walsh's decision to publish that memorandum likely serves as a waiver of privilege of not only that communication, but any and all related communications between counsel and Orono. See Minn. R. Evid. 502; *PaineWebber Grp., Inc. v. Zinsmeyer Trusts P'ship*, 187 F.3d 988, 992 (8th Cir. 1999) ("The attorney/client privilege is waived by the voluntary disclosure of privileged communications, and courts typically apply such a waiver to all communications on the same subject matter.").

Orono pay Long Lake \$50,000 to cover Long Lake's attorneys' fees incurred in bringing this motion and also to act as a deterrent to future violations. Long Lake also asks that should Orono hire any Long Lake firefighters, that Orono be fined \$1,000 per day, per firefighter, for the ongoing violation.

## **FACTUAL BACKGROUND**

### **I. Orono's Activities Following the Entry of the Order.**

#### **A. Relevant Provisions of the Order.**

On July 14, 2023, the Court issued its Order temporarily enjoining Orono from:

2. . . . directly or indirectly committing any violation of the Contract for Fire Protection and the Contract for Joint Ownership to which the City of Long Lake and the City of Orono are parties, and from interfering with the Fire Service Contract to which the City of Long Lake and the Village of Minnetonka Beach are parties.
3. . . . recruiting Long Lake firefighters to begin working for the Orono Fire Department, seeking a transfer of Long Lake firefighters' pension funds, or otherwise interfering with the work of the Long Lake firefighters before the end of this litigation.
4. . . . using, or hindering the City of Long Lake's use of, Fire Station 1 and Fire Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use.

Order at 1–2. The Order further makes numerous findings relative to Orono's obligations under the Fire Protection Contract and the harm Long Lake will likely suffer if Orono breaches the Fire Protection Contract, including the following:

- “In the current status quo, Long Lake does have a fire department, and its contractual obligations to provide fire protection services to Orono as well as two other municipalities will continue to extend for another 2 ½ years.” Order at 17.
- “The Court finds that Orono's goal of setting up its own fire department as soon as possible, without waiting for the end of the contracts to compete for scarce firefighting resources with Long Lake, following decades in which the parties have worked cooperatively under a joint fire protection arrangement, poses a risk of irreparable harm to Long Lake.” Order at 21.

- “While it may be true that volunteer firefighters are allowed to volunteer for more than one department, Orono offered no hint as to the call schedule it anticipates requiring of its firefighters, and how that may impact the ability or willingness of those firefighters to continue to be on call for Long Lake, or how those firefighters may prioritize their obligations to one department over the other. If Long Lake is unable to maintain a full roster of firefighters, due to Orono’s hiring of those firefighters for its own department, Long Lake’s ability to continue to perform its contractual obligations to all of the contracting cities throughout the remainder of the contractual term will likely be impaired.” Order at 26.
- “The citizens of both Long Lake and Orono are entitled to continue to receive essential fire protection services, that they have been receiving satisfactory services from the LLFD through the existing FP Contract and JO Contract, and that enforcement of the parties’ obligations to honor their existing contracts will serve the public policy of ensuring all of the citizens of Long Lake and Orono will continue to receive the services to which they are entitled through the December 31, 2025 termination of those contracts.” Order at 28–29.

#### **B. Orono Immediately Defies the Order**

In the days following the July 14, 2023 Order, representatives of Long Lake have kept themselves informed of the actions of the Orono City Council and the Orono Fire Chief. Declaration of Mayor Charlie Miner (“Miner Decl.”), ¶ 2. First, on July 18, 2023, Orono’s counsel, Mr. Reuvers, sent a legal memorandum to the Orono Mayor and City Counsel providing an “update [] on the status of this litigation and [] our preliminary analysis of the legal issues and recommendations moving forward.” Greening Decl. ¶ 2, Ex. A. In pertinent part, the memorandum states, “the City may choose to hire any LLFD firefighter who applies for a position, but *pursuant to the order may not proactively solicit their employment.*” *Id.* at 2 (emphasis added). This misconstrues the Court’s Order and accompanying memorandum, which at no point limits Orono’s prohibited recruitment activities to “proactively solicit[ing]” Long Lake firefighters. Mayor Walsh subsequently posted this memorandum on social media. Miner Decl. ¶ 3, Ex. A.

1. Recruiting and Contacting Long Lake Firefighters

Regardless of whether the Order precludes hiring or only recruiting, Orono and its representatives have continued contacting and recruiting Long Lake firefighters despite acknowledged prohibitions in the Court's Order. More so, Orono has done so without obtaining Long Lake's consent. First, representatives of Orono have contacted Long Lake firefighters regarding potential employment with the Orono Fire Department. On Wednesday, September 20, 2023, Orono Fire Chief James Van Eyll sent a text message to a number of individuals, including active Long Lake firefighters, inviting them to attend the Orono Recruitment Open House on Wednesday, September 27, 2023. Specifically, the text message stated:

It would be great to have you at the Recruitment Open House on Wednesday, September 27 from 7-9. It will be the day after mediation and we should be able to discuss and determine the path moving forward.

Miner Decl. ¶ 4, Ex. B. This text message was sent to approximately seven current Long Lake firefighters. *Id.* at ¶ 5.

Then, on the evening of September 26, 2023, Long Lake firefighter Cole "Cody" Farley received an unsolicited and angry call from Orono Mayor Walsh making claims, rather confusingly, about "phone calls that have been happening" that were "slanderous, malicious, and smearing." Declaration of Cole Farley ("Farley Decl.") ¶ 7. Mr. Walsh threatened Mr. Farley stating that he could be sued and there are consequences to being involved in a lawsuit. Farley Decl. ¶ 8. Mayor Walsh repeatedly mentioned "the trouble that someone would be in if this doesn't stop immediately and the difficulty that comes to someone through a lawsuit." Farley Decl. ¶ 10. Mr. Farley told Mayor Walsh that he had no idea what he was talking about, but Mayor Walsh pressed on threatening that "lawsuits could come to anyone involved." Farley Decl. ¶¶ 11–12.

Given Mayor Walsh's political status, experience with the legal system, and ample resources, Mr. Farley was scared for his wellbeing and the wellbeing of his family. Farley Decl. ¶ 13.

At the Orono Recruitment Open House on September 27, 2023, Fire Chief Van Eyll made it clear that Orono intends to hire Long Lake firefighters as part of the Orono Council consent agenda on October 9, 2023. Greening Decl. ¶ 6. Chief Van Eyll confirmed that the Orono City Council will have two resolutions involving the hiring of firefighters, one resolution for paid-on-call and one for duty crews. Greening Decl. ¶ 5; *See also* Miner Decl. ¶¶ 12–13, Exs. E–F. Additionally, among those who Orono intends to hire, eight individuals are current Long Lake firefighters. Greening Decl. ¶ 6; *See also* Miner Decl. ¶¶ 12–13, Exs. E–F.

At the event, Chief Van Eyll told the firefighter recruits that he has “no problem at all” with the firefighters working for both the Long Lake Fire Department and the Orono Fire Department. Greening Decl. ¶ 7. But the reality of that kind of situation is not so simple. One of the firefighter recruit asked about a scenario in which the employee is on an Orono duty crew, but retains membership with Long Lake Fire Department. The following hypothetical was posed: If, while working on Orono's duty crew the alarm goes off for Long Lake, is that firefighter able to leave and attend to the Long Lake call? Chief Van Eyll responded “No.” Greening Decl. ¶ 8. Chief Van Eyll went on to state that under certain circumstances response to Long Lake might be possible, but he makes clear that the Orono duty crew member would need to get permission to leave to attend the Long Lake call. Greening Decl. ¶ 9. In other words, firefighters may work for both departments, but only when it is convenient for Orono. The Long Lake Fire Department would not be able to count on the availability of such members in the event of a serious emergency and therefore the Orono's actions in hiring Long Lake firefighters could very likely have a clear, negative effect on the Long Lake Fire Department's operational capabilities.

On September 28, 2023, Chief Van Eyll emailed Long Lake Fire Chief Heiland about “some issues” amongst some of the firefighters. His email states:

I have been receiving reports from some of our potential recruits that they are being ostracized and called “traitors” by fellow firefighter and fire fighter leaders for expressing an interested [sic] in serving the community as Orono firefighters. One of our potential recruits who was on LLFD but currently isn’t reported to me that a chief level LLFD officer reached out to him to let him know he had suspect judgment. These comments and the treatment of the firefighters is becoming a hinderance to ability to our ability [sic] to build a fire department and the undoubtedly the esprit [sic] de corps of the LLFD which as the end of the day does not serve the public’s interest.

Miner Decl. ¶ 10, Ex. C. On October 4, 2023, Mayor Miner, after investigating the matter, responded to Chief Van Eyll, explaining that it appears “those communications consisted of text message(s) between two friends” and since Chief Van Eyll’s message to Chief Heiland, “the LLFD member who was involved in exchanging the text message(s) met with you, and you acknowledged that the text messages had been taken out of context.” Miner Decl. ¶ 11, Ex. D. Mayor Miner also pointed out that “[t]he underlying activity by Orono that has created these issues is the very concern [] expressed to the Court in [Long Lake’s] motion for a temporary injunction and why the court ordered Orono that it is prohibited from recruiting or hiring Long Lake firefighters.” *Id.* Plainly, under the terms of the Court’s Order, Orono should not be attempting to “build a fire department” with Long Lake firefighters. If Orono was not attempting to hire Long Lake firefighters, there would be no issues.

At the city’s council meeting on the evening of October 9, 2023, the Orono City Council followed through on Chief Van Eyll’s suggested course of action by hiring firefighters to the Orono Fire Department via three separate Council actions. These actions included the hiring of eight current Long Lake Fire Department members. Miner Decl. ¶ 14. At the meeting, Chief Van Eyll acknowledged before the Orono Council that several of the hires were of current LLFD members,

and further admitted to knowing their present fire membership status based upon his communications with those members at multiple recruiting events and at other times both in person and via text messaging. Miner Decl. ¶ 15. These statements and the corresponding Orono City Council actions confirmed the suspicions of the City of Long Lake: that Orono has actively recruited and now hired several LLFD members. Miner Decl. ¶ 16.

2. Proposed Expansion of Fire Station 2

Further, at the Orono Recruitment Open House, Chief Van Eyll discussed Orono's plan to expand and remodel Fire Station 2. First, it appears that Orono plans to construct a temporary structure on Fire Station 2's property to house fire trucks Orono is purchasing. Greening Decl. ¶ 10. Based upon Chief Van Eyll's comments at the Open House, this will occur prior to July 1, 2024, when the Orono Fire Department will become responsible for two CAD zones that will be removed from the Long Lake Fire Department's territory. Greening Decl. ¶ 11. Orono has not sought permission to perform such construction activities from Long Lake and it is apparent Orono believes that obtaining such consent is not necessary. Miner Decl. ¶ 9. Chief Van Eyll mentioned that this expansion was permitted so long as it does not interfere with Long Lake's ability to utilize or respond out of Fire Station 2. Greening Decl. ¶ 12. This response is disingenuous for many reasons. Orono has no authority to conduct major construction activities on Fire Station 2 without the consent of Long Lake. The Contract for Fire Protection expressly provides that Long Lake shall manage the operations and maintenance of the Fire Stations. This expansion, without Long Lake's consent, defies Long Lake's authority over the Fire Stations.

According to Chief Van Eyll, Orono has walked the property with an architectural firm and has outlined plans to do an addition to the building by adding bays. Greening Decl. ¶ 13. The plan is to build something that could eventually be modified to connect to Fire Station 2 "once [Orono] has access to Station 2." Greening Decl. ¶ 14. Although Chief Van Eyll stated that the



construction would not disturb the operations of the Long Lake Fire Department, this is highly unlikely. The proposed expansion directly conflicts with the terms of the Fire Protection Contract and Long Lake's authority to "oversee all activities and operations at Fire Station No 2," during the term of the contract. As such, it also violates the Court's Order, requiring Orono's compliance with the Contract for Fire Protection and enjoining Orono from hindering Long Lake's use of Fire Station 2.

## **ARGUMENT**

### **I. ORONO HAS NOT COMPLIED WITH THE INJUNCTION AND SHOULD BE HELD IN CONTEMPT AND SANCTIONED**

The Court has broad, inherent discretion to hold a party in contempt when it has "acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Time-Share Systems, Inc. v. Schmidt*, 397 N.W.2d 438, 441 (Minn. App. 1986)). Contempt occurs when a party disobeys "any lawful judgment, order, or process of the court" outside of the immediate presence of the Court. Minn. Stat. § 588.01 subd. 3(3). Nevertheless, civil contempt powers should be exercised with caution. *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015). "The sanction imposed for such failure is ordered primarily to encourage future compliance with the order and to vindicate the rights of the opposing party." *Time-Share Sys., Inc.*, 397 N.W.2d 441. Persons found in contempt of court shall be punished by a fine or imprisonment. *Time-Share Sys.*, 397 N.W.2d at 441; Minn. Stat. § 588.10.

#### **A. Orono's Recruiting and Hiring of Long Lake Firefighters Violates the Court's Order.**

Orono's actions leading to this motion are not disputed. Instead, Orono provides the same type of self-serving and unconvincing interpretations of their written obligations that led to this lawsuit in the first place. Orono's position that the Order somehow allows them to recruit and hire Long Lake firefighters is simply unsupported and contrary to Orono's own counsel's interpretation

of the Order. The Order expressly states that Orono is temporarily enjoined from “recruiting Long Lake firefighters to begin working for the Orono Fire Department.” Order ¶ 3. It also states that Orono is enjoined from “directly or indirectly committing any violation of the Contract for Fire Protection . . . and from interfering with the Fire Service Contract to which the City of Long Lake and the Village of Minnetonka Beach are parties.” Order ¶ 2. The Court further found that “[i]f Long Lake is unable to maintain a full roster of firefighters, due to Orono’s hiring of those firefighters for its own department, Long Lake’s ability to continue to perform its contractual obligations to all of the contracting cities throughout the remainder of the contractual term will likely be impaired.” Order at 26. Orono’s actions contacting, recruiting, and hiring eight Long Lake firefighters is a clear violation of the Court’s Order.

Moreover, Orono is not entitled to the benefit of any argument that they did not understand or misinterpreted the Court’s order. On July 18, 2023, shortly after Orono published its legal counsel’s memorandum, Long Lake counsel emailed Mr. Reuvers and expressly told him that the Order precludes Orono from hiring any firefighters from Long Lake for the pendency of the litigation and the Contract for Fire Protection. Greening Decl. ¶ 3, Ex. B. The email included reference to the Court’s Order. Again, Orono simply ignored these warnings and proceeded to recruit and hire eight Long Lake Fire Department members.

**B. Orono’s Proposed Expansion of Fire Station 2 will Likely Violate the Court’s Order.**

Orono representatives have also publicly discussed a plan to construct an expansion of Fire Station 2 during the term of the Contract for Fire Protection. This will likely violate the Court’s Order, which expressly enjoins Orono from “using, or hindering the City of Long Lake’s use of, Fire Station 1 and Fire Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use.” Order ¶ 4. The Order also provides that Orono is enjoined from

“directly or indirectly committing any violation of the Contract for Fire Protection . . . and from interfering with the Fire Service Contract.” Order ¶ 2.

Chief Van Eyll’s claim that any construction on or near Fire Station 2 will not hinder Long Lake’s use of the Fire Station is not realistic. It appears that Orono plans to build an additional space adjacent to, but not immediately connect to, Fire Station 2, yet *close enough that it could be connected in the future*. Greening Decl. ¶ 13. It is almost certain that any construction activity occurring in that type of proximity to Fire Station 2 would cause issues for the Long Lake Fire Department. Additionally, this proposed expansion, without the consent of Long Lake, likely directly conflicts with the terms of the Fire Protection Contract, and Long Lake’s authority to “oversee all activities and operations at Fire Station No 2,” during the term of the contract. As such, it also violates the Court’s Order, requiring Orono’s compliance with the Contract.

Orono is in contempt and should be sanctioned \$50,000 to cover Long Lake’s attorneys’ fees and also to act as a deterrent for future violations. Furthermore, to the extent Orono proceeds to hire Long Lake firefighters, Orono should be sanctioned \$1,000 per firefighter for each day Orono is in violation and until Orono provides proof of full compliance including an affidavit attesting that it will remain compliant through the remainder of this litigation or the remainder of the Contract for Fire Protection.

### CONCLUSION

For the reasons discussed above, Long Lake respectfully requests the Court issue an order to show cause to Defendant City of Orono as to why the Court should not hold it in contempt. Long Lake also requests an award of \$50,000 and a fine of \$1,000 per day, per firefighter, for each Long Lake firefighters hired by Orono during the term of the order, to be paid until Orono has complied with the Court’s Order.

**LARKIN HOFFMAN DALY & LINDGREN, LTD.**

Dated: October 13, 2023

s/Christopher H. Yetka

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